IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/04/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION No.587 of 1996
and W.P.Nos. 589, 591, 1587 to 1590, 1592 and 1594 of 1996
and 38825, 38826 and 38827 of 2002

& WMP.NOs. 57960 to 57692 of 2002

W.P.No:587 of 1996

M/s.Coimbatore United People Transport Ltd.,
8/4.B, G.R.G.Lay Out,
Trichi Road,
Coimbatore-18 ..Petitioner

-Vs-

1. The State of Tamil Nadu
rep. by its Secretary
Home (Transport) Dept.,
Fort St. George, Madras-9

2. The Regional Transport Authority
Balasundaram Chettiar Road,
Coimbatore-18 ..Respondents

For petitioner:: Mr. V.T.Gopalan, Senior Counsel
for Mr. R.Krishnamachari
and Mr. M.Krishnappan

For respondents: Mr. N.R.Chandran, Advocate General
assisted by Mr.Sanjay Ramasamy G.A.,
Mr.V.R.Kamalanathan for R.3

Petitions filed under Article 226 of The Constitution of India praying
for the issue of a writ of Declaration/Mandamus as stated therein.

:COMMON ORDER

In W.P.No:587 of 1996 the petitioner M/s.Coimbatore United People
Transport Ltd., has prayed for the issue of a writ of declaration declaring
that the petitioner is entitled to continue to ply their stage carriage on the
route Gandhipuram to Boluvampatti and for such further or other orders as this

court may deem fit.

2. In W.P.No:589 of 1996 the petitioner, M/s.Coimbatore Subrban Carriers Private Limited, prayed for the issue of a writ of declaration declaring that the petitioner is entitled to continue to ply their stage carriage on the route Coimbatore Railway Station to Kanuvai and for such further or other orders as this court may deem fit.

3. In W.P.No: 591 of 1996 the petitioner, M/s.Coimbatore Subrban Carriers Private Limited, prayed for the issue of a writ of declaration declaring that the petitioner is entitled to continue to ply their stage carriage on the route Gandhipuram to Boluvampatti and for such further or other orders as this court may deem fit.

4. In W.P.No.1587 of 1996, the petitioner G.D.Gopal, has prayed for the issue of a writ of mandamus in the nature of a writ of direction directing the second respondent to maintain continuity of service by the petitioner on the route P.S.G Arts college to Vellalore (via) Town Hall, Ukkadam, Pothanur, Route No.19 on temporary permits and for such further or other orders as this court may deem fit.

5. In W.P.No.1588 of 1996, the petitioner G.D.Gopal, has prayed for the issue of a writ of declaration declaring that the petitioner is entitled to hold a stage carriage permit for the route P.S.G Arts college to Vellalore (via) Town Hall, Ukkadam, Pothanur, Route No.19 on the strength of permit which has been re newed for the period up to 30.9.2000 by the Regional Transport Authority, Coimbatore.

6. In W.P.No: 1589 of 1996 the petitioner, N.T.Arasu, has prayed for the issue of a writ of declaration declaring that the petitioner is entitled to continue to ply the stage carriage permit for the route Coimbatore to Kottur (via) Podanur, Vedchittor, Negamam, Pollachi, Nalmoolai, Sangam and to maintain the continuity of service on the strength of the permit which has been renewed for the period upto 9.4.1998 by the Regional Transport Authority.

7. In W.P.No: 1590 of 1996 the petitioner, N.T.Arasu, has prayed for the issue of a writ of declaration declaring that the petitioner is entitled to continue to ply the stage carriage permit for the route Coimbatore to Kottur (via) Podanur, Vedchittor, Negamam, Pollachi, Nalmoolai, Sangam and to maintain the continuity of service on the strength of the permit which has been renewed for the period upto 9.4.1998 by the Regional Transport Authority.

8. In W.P.No.1592 of 1996, the petitioner M/s.Adhilakshmi Transports Pvt. Ltd., has prayed for the issue of a writ of declaration declaring that the petitioner is entitled to hold a stage carriage permit for the route P.S.G Arts college to to Perur (via) Lakshmi Mills and Town Hall with independent shuttle trips between PSG Arts College to Saibaba Colony, Route No.S.8 on the strength of permit which has been renewed for the period up to 15.3.1998 by

the Regional Transport Authority, Coimbatore.

9. In W.P.No.1594 of 1996, the petitioner M/s.Union Bus Service (P) Ltd., has prayed for the issue of a writ of declaration declaring that the petitioner is entitled to hold a stage carriage permit for the route NO.2 in Coimbatore Town Service (via) Lakshmi Mills, Railway Station, Town Hall and Thelungupalayam Pirivu and to maintain the continuity of service on the strength of permit which has been renewed for the period up to 7.11.1996 by the Regional Transport Authority, Coimbatore.

10. In W.P.No:38825 of 2002, the petitioner G.Parvatham has prayed for the issue of a writ of mandamus or direction forbearing the respondents from in any manner interfering or preventing the petitioner's stage carriage bearing No.TN38 Q 4543 ply on the route Coimbatore Town Service No.S.19 (Viz) P.S.G. Arts College to Vellalore.

11. In W.P.No:38826 of 2002, the petitioner V.R.Usha Raja has prayed for the issue of a writ of mandamus or direction forbearing the respondents from in any manner interfering or preventing the petitioner's stage carriage bearing No.TN 41 L Q 4232 ply on the route Coimbatore to Kottur.

12. In W.P.No:38827 of 2002, the petitioner R.S.Bus Service has prayed for the issue of a writ of mandamus or direction forbearing the respondents from in any manner interfering or preventing the petitioner's stage carriage bearing No.TN 38 B 0155 ply on the route P. S.G. Arts College to Perur (Route No.S.8) and pass such or other order as this court may deems fit.

13. The above writ petitions are consolidated at the joint request of the counsel for the petitioners and respondents and by the Orders of My Lord Hon'ble The Chief Justice, the batch of Writ Petitions were ordered to be listed before this court. The relief prayed for in the above writ petitions being common, they are consolidated and disposed of by this common order.

14. The last of the three writ petitions are by transferees of the permits pending earlier writ petitions and they seek the assistance of this court in seeking for the issuance of writ of mandamus forbearing the respondents from interfering with their operation on the routes in question. In other respects, there is no other difference.

15. Heard Mr.V.T.Gopalan, learned senior counsel appearing for the petitioners excepting the last three and in the last three writ petitions Mr.M.Krishnappan appeared for Mr.V.Sanjeevi. In all the writ petitions, Mr.N.R.Chandran, learned Advocate General appearing for the respondents 1 and 2 and Mr.V.R.Kamalanathan, learned counsel appearing for the State Transport Undertaking Corporation.

16. Common arguments were advanced by either side and therefore by a common order this batch of writ petitions are disposed of. Mr. V.T.Gopalan, learned senior counsel and Mr.M.Krsihnappan, learned counsel contended that permits were granted and renewed upto date and therefore a mandamus has to be issued as prayed for or a declaration declaring the rights of the respective petitioners has to be issued as prayed for. According to the learned senior counsel the grants or permits granted as per certain interim orders should be deemed to have been granted validly and therefore the petitioners are entitled to operate on the permit and the petitioners are entitled to continue the operation on the routes for all time to come.

17. According to the learned Advocate General these writ petitions are abuse of process of court and the earlier orders of this court as well as the Supreme Court are fatal to the petitioners' claim and no writ of Declaration/mandamus could be sought for at all as after the implementation of the Area Scheme, no grant or permit much less, temporary or otherwise could be granted, nor the petitioners' could claim that they are entitled to the benefit of Tamil Nadu Act 41 of 1992, nor they could claim that their permits if any issued in their favour pending various proceedings as per interim direction for the operation or for the continuance of the operation pending disposal of the writ petitions in this batch of writ petitions will form a separate class or a distinct class nor such grant or permit is permissible in law and this court will decline to issue the writ of mandamus or declaration as prayed for as such issue of writs would result in either violating the Provisions of the Tamil Nadu Motor Vehicles Act on the area scheme which is a Legislation by itself and the earlier pronouncement of the Supreme Court and no mandamus could be issued to deviate or violate the statutory provisions of the Tamil Nadu Motor Vehicles Act or The Motor Vehicles (Special Provisions) Act.

18. There is force in the contention advanced by the learned Advocate General. Though Mr.V.T.Gopalan, learned senior counsel and Mr.M. Krishnappan, learned counsel persuasively contended that the petitioners are entitled to the relief prayed for. This court finds that there are no merits in the contentions advanced and the contentions advanced by the counsel for the petitioners cannot be countenanced at all in view of the statutory Provisions of the Motor Vehicles Act, the area scheme in operation and also in the light of the provisions of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992, besides the earlier judgment of the Supreme Court, which is an inter party pronouncement.

19. It is not necessary to refer to the facts in all the writ petitions since the claims in the respective cases and the basis of claims are identical.

20. Tmt.Deivanai Ramanathan applied to the Regional Transport Authority for renewal of stage carriage permit for a period of 5 years from 30th September 1998 for the route Singanallur Town Service Route (Route No.19 via PSG Arts College to Vellalore). M/s.Cheran Transport Undertaking also applied for stage carriage permit to ply on the said route. The renewal

application of Deivanai Ramanathan as well as the fresh application of M/s.Cheran Transport Undertaking were taken up for consideration by the Regional Transport Officer after they were notified under section 57(3) of the Motor Vehicles Act. The said Transport Undertaking submitted its representation for the grant of new permit. The renewal applicant n Deivanai Ramanathan moved this court under Art.226 in W.P.no.4135 of 1978 and also secured interim orders directing maintenance of status quo to continue while it is made clear that the RTO shall go on and pass orders on merits on the said applications, but the same shall not be implemented until further orders. Therefore temporary permits were issued to the renewal applicant Tmt.Deivanai Ramanathan. The RTA considered the renewal application of Deivanai Ramanathan as well as that of the State Transport Undertaking, assessed the rival claims and awarded marks. The renewal application of Deivanai Ramanathan was awarded 10 marks while M/s.Cheran Transport Corporation, a State Transport Undertaking was awarded 11 marks. After hearing the arguments of the counsel on either side, the Regional Transport Authority on merits concluded that M/s.Cheran Transport Corporation which has secured higher marks has to be granted permit. The RTA rejected the application for renewal of permit applied by said Tmt.Devivanai Ramanathan and granted permit to the State Transport Undertaking, Coimbatore to ply one bus on the said route for three years. The RTA also made it clear that the orders will take effect only on the disposal of the writ petition No.4135 of 1978 by this court.

21. Being aggrieved, appeals were preferred by Tmt.Deivanai Ramanathan and others before the State Transport Appellate Tribunal, Madras in Appeal Nos:482, 483, 484, 502, 505, 516, 517 and 521 of 1979 respectively. Pending the appeals, at the request of the renewal applicants, the State Transport Appellate Tribunal allowed the interlocutory applications which enabled the renewal applicants to continue operation. The State Transport Appellate Tribunal in Appeal No.488 of 1979 preferred by the said renewal applicant Tmt.Deivanai Ramanathan after considering the merits of the claim of the said renewal applicant as well as the State Transport Undertaking while following certain unreported orders passed by this court upheld the grant of permit by the RTA in favour of M/s.Cheran Transport Corporation by order dated 27th February, 1982. On merits, the State Transport Appellate Tribunal concluded that the State Transport Undertaking is better placed, secured higher marks and its operation is in the public interest and confirmed the grant made by the Regional Transport Authority in favour of the State Transport Undertaking. Identical appeals were dismissed and proceedings of the Regional Transport Authority granting permit in favour of State Transport Undertaking were confirmed.

22. Challenging the proceedings of the Regional Transport Authority as affirmed by the State Transport Appellate Tribunal, the said Deivanai Ramanathan and others preferred revisions before this Court in CRP No:1852 to 1854and 1856 of 1982 and pending the revision petitions the proceedings of the RTA as affirmed by the State Transport Appellate Tribunal were stayed and directions were issued, which enabled the writ petitioners to continue the operations.

23. The said batch of CRP Nos: 1852 to 1854 and 1956 of 1982 came to

be allowed by Venkatasamy,J., as he then was by common order dated 20th August 1990 and the status quo of both the parties being allowed to ply their stage carriages on the routes taking appropriate permits from the authorities be continued, while referring to the earlier order in CRP.No:349 of 1977 etc., decided by Mohan,J., as he then was. The Civil Revision Petitions came to be allowed by the common order dated 20.8.1990. Based upon the directions issued in the CRPs, the operators were granted permits to ply on the said routes.

24. As against the orders passed in the said batch of CRPs, by Venkatasamy,J., as he then was, M/s.Cheran Transport Corporation, the State Transport Undertaking moved the Apex Court in Civil Appeal Nos:14 01 to 1404 of 1996 etc., A Division Bench of the Supreme Court by judgment dated 19th January 1996 after detailed consideration and referring to the earlier proceedings set aside the orders of Venkatasamy J., made in CRP.Nos: 1852 to 1854 and 1856 of 1982 and restored the decision of the State Transport Appellate Tribunal, dated 31.3.1982 while awarding cost.

25. The Apex Court in Cheran Transport Corporation Ltd., Vs. Regional Transport Authority, reported in 1996 (7) SCC 343, held thus:-

"11. In this case the grant of permit to Respondent 2 is challenged by the appellant. In Chinnaswamy case1, it was a consent order which was passed but that consent of the parties is lacking in the present case. Apart from that, there was only one permit which was to be given and the Regional Transport Authority and the Tribunal, having determined that the marks of the appellant were more than that of Respondent 2, had rightly come to the conclusion that the route could be awarded only to the appellant. Following the ratio of Sivaswami case2 it must be held that the mere fact that the travelling public had been using the carriages run by the appellant and Respondent 2 can, by itself, not be a ground for allowing the said respondent to continue to ply the carriages.

12. Counsel for the respondent then submitted that Respondent 2 has been granted renewal of the permit up to 6-11-1996. While referring to Section 10 of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992, it was sought to be contended that because of the said provision, there can be no challenge to the permit of the said respondent which has now been renewed. The said Section 10 reads as under:

"Notwithstanding anything contained in Chapter V or VI including Section 98 of the Motor Vehicles Act, 1988 all orders passed granting permits or renewal or transfer of such permits or any variation, modification, extension or curtailment of the route or routes specified in a stage carriage permit during the period commencing on 4-6-1976 and ending with the date of the publication of this Act in the Tamil Nadu Government Gazette, shall for all purposes be deemed to be and to have always been taken or passed in accordance with the provisions of this Act as if this Act had been in force at all material times."

13. We fail to appreciate as to how the said provision can be of any assistance to the said respondent. All that Section 10 provides is that the orders passed granting permits or renewal etc. under the provisions of Motor

Vehicles Act, 1988 are deemed to have been passed in accordance with the provisions of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992. The said Section 10 does not validate any permit which was initially invalid. It is a provision which continues the permits etc. which had been validly granted under the old Act. As no valid permit could have been granted to Respondent 2 from the route Coimbatore to Kottur, the provisions of Section 10 cannot give a right to Respondent 2 to get the permit when it had only six marks. When there was only one permit to be given for the said route and the marks obtained by the appellant were much more than that of the respondent. In our opinion, the Appellate Tribunal had rightly upheld the order of the Regional Transport Authority granting the stage carriage permit to the appellant and in not renewing the permit of Respondent 2.
14. For the aforesaid reasons, these appeals are allowed and the judgment of the Madras High Court in CRPs Nos. 1852-54 and 1856 of 1982 which is under appeal, is set aside and the decision dated 31-3-1982 of the Tribunal is restored. The appellant will be entitled to costs throughout."

26. The above pronouncement of the Apex Court was rendered on 19.1 .1996 and the claims of the writ petitioners herein, who are renewal applicants as well as that of the State Transport Undertaking has been decided finally by the Apex Court.

27. As per the pronouncement of the Apex Court, the State Transport Undertaking is entitled to permit granted by the Regional Transport Authority and affirmed by the State Transport Appellate Tribunal. The decision of the Single Judge of this court has been reversed. The said pronouncement of the Supreme Court being inter party, is fatal to the petitioners' claim in all these writ petitions. After the pronouncement of the Supreme Court with ingenuity, renewal applicant moved Writ petition under Art.32 of the Constitution before the Supreme Court of India. The Apex Court while dismissing the writ petition as withdrawn observed that the order of dismissal dated 4.10.2002 would not prevent the petitioner to move afresh before this court if any other remedy is available in law. Thereafter the present batch of writ petitions have been filed seeking the relief of declaration as if the petitioners are entitled to operate as if there is valid grant in their favour to operate on various routes. These writ petitions have been pending since 1996 and the petitioners were operating as per certain interim directions issued pending the proceedings before the State Transport Appellate Tribunal, and Revision Petitions as well as pending the present writ petitions. The writ petitioners have successfully managed all these years which has led to the misplacement of these batch of writ petitions with connivance of staff in the Registry. Twice/Thrice reconstruction was ordered and every time in the last minute the writ petitioners successfully avoided the final hearing and are successful so far in continuing their operations on the routes. This unfortunate situation created by the concerned deserves to be deprecated.

28. It is well settled law that after coming into force of the Tamil Nadu Act 41 of 1992 which came into force on 31st of July 1992, which received the assent of the President of India on 31.7.1992, all the petitioners' claims for renewal having been rejected which reached finality on 19.1.1996 and the rejection of the petitioner's application for renewal having been made on

16.2.1979, much prior to the commencement of the Tamil Nadu Act, 41 of 1992 on 4th June 1996, the petitioners cannot claim that their claims for permits are governed by the Tamil Nadu Act 41 of 1992.

29. In Adarsh Travels Bus Service Vs. State of U.P., reported in AIR 1986 SC 319 while considering the scope of Chapter IV A of the Motor Vehicles Act, 1939 the Apex Court held thus:-

"6. It is thus seen that while the provisions of Chapter IV-A are devised to override the provisions of Chapter IV and it is expressly so enacted, the provisions of Chapter IV-A are clear and complete regarding the manner and effect of the "take-over" of the operation of a road transport service by the State Transport Undertaking in relation to any area or route or portion thereof. While on the one hand, the paramount consideration is the public interest, the interest of the existing operators are sufficiently well-taken care of and such slight inconveniences to the travelling public as may be inevitable are sought to be reduced to a minimum. To begin with the State Transport Undertaking must think it necessary in the public interest to provide efficient, adequate, economical and properly co-ordinated State transport services in relation to any area or route or portion thereof, to the exclusion complete or partial of other persons or otherwise. This is the initial requirement for the initiation of a scheme. Even at that stage, the State Transport Undertaking is required to apply its mind to the question of complete or partial exclusion of other persons or otherwise from operating transport services in relation to any area or route or portion thereof. There is ample and sufficient guidance to the State Transport Undertaking for the application of mind. Thereafter objections to the scheme are to be heard. All existing operators providing transport facilities along or near the area or the route proposed to be covered by the scheme are to be heard. Therefore, it will be open to any operator who is likely to be affected by total or partial exclusion to object to the scheme and suggest such modification as may protect him. A hearing is required to be given and the hearing is no empty formality as decisions of this Court have shown. Even that is not an end of the matter. Even thereafter, the State Transport Undertaking as well as the State Government are empowered to cancel or modify the scheme under Section 68-E. In other words, if in the actual working of the approved scheme any difficulty or hardship is experienced by the public or for that matter by other operators, such difficulty may be removed and hardship relieved by appropriate action under Section 68-E. Both Section 68-F and the proviso to Section 68FF provide for the issue of temporary permits to private operators if the State Transport Undertaking has not applied for a permit temporary or otherwise in respect of a scheme published or approved. We thus find that at every stage, abundant provision is made to protect the public interest as also the interest of private operators by providing for consideration and reconsideration of any problems that may arise out of a proposed, published or approved scheme. It is in that context, we must construe Section 68-C and Section 68-HH (sic Section 68FF) both of which provisions have been extracted by us earlier.

7. A careful and diligent perusal of Section 68-C, Section 68-D(3) and Section 68-FF in the light of the definition of the expression " route" in

Section 2 (28-A) appears to make it manifestly clear that once a scheme is published under Section 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the State Transport Undertaking may operate on the notified area or notified route except as provided in the scheme itself. A necessary consequence of these provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorised so to do by the terms of the scheme itself. He may not operate on any part or portion of the notified route or area on the mere ground that the permit as originally granted to him covered the notified route or area. We are not impressed by the various submissions made on behalf of the appellants by their several counsel.

30. The very provisions of the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 was the subject matter of challenge before the Apex Court in TPK Thilagavathy Vs. RTA, Periyar District, reported in 1995 (1) SCC 456. The Apex Court pointed out that the State Legislature in keeping with the decision of the Apex Court in Pandian Roadways case held that no permit could be granted after the scheme was granted approval under the new Act and the cut off date has also been set out. In this respect, the Supreme Court held thus:
"8. Section 6 like Section 3 has four sub-sections. Sub-sections (1) to (3) deal with renewal of permit or modification of condition therein in accordance with same procedure as applied to renewal or variation under Chapter V of the Act. But sub-section (4) debars the authority from issuing any fresh permit. It reads as under:

"Notwithstanding anything contained in this Act no new permit shall be granted under this Act to any person on any route covered by an approved scheme."

This section unlike other sections comes in operation from 30-6-1990. Thus from 30-6-1990 the Regional Transport Authority is not empowered to grant any new permit to any operator overlapping whole or part of notified route. But so far permits, grant of which has been validated by 30-6-1990, would be renewable under this section even after 30-6-1990. The effect of Section 6, therefore, is that those operators who were granted permits between 1976 to 30-6-1990 would be entitled to seek renewal but the authorities would not be entitled to grant fresh permit after that date. Validity of even sub-sections (1) and (2) was not challenged by the Undertaking. And sub-section (4) cannot be challenged by the appellants as it is in keeping with Chapter VI of the new Act. It is further reinforced by Section 7 which abates all proceedings pending for grant of permit on a notified route before any authority or court in appeal.

9. But what has created confusion is Section 10 which reads as under:
"10. Notwithstanding anything contained in Chapters V or VI including Section 98 of the Motor Vehicles Act, 1988 all orders passed granting permits or renewal or transfer of such permits or any variation, modification, extension or curtailment of the route or routes specified in a stage carriage permit during the period commencing on the 4th day of June, 1976 and ending with the date of the publication of this Act in the Tamil Nadu Government Gazette,

shall for all purposes be deemed to be and to have always been taken or passed in accordance with the provisions of this Act as if this Act had been in force at all material times." (emphasis supplied)
The section is not happily worded. Literally read it may clash with sub-section (4) of Section 6 of the Act. Reliance was placed on the expression "and ending with the date of the publication of this Act in the Tamil Nadu Government Gazette". It was urged that this clearly indicated that any permit granted between 4-6-1976 and the date of publication of the Act, namely, 31-7-1992, would be valid. According to the learned counsel the High Court committed an error of law in dismissing the writ petitions filed by the appellants on basis that their permits having been granted or countersigned after 30-6-1990 were invalid and contrary to the Scheme of the Act. A superficial reading of Section 10 does give an impression that the operation of the Act for purposes of grant of permit stood extended not only up to 30-6-1990 but up to 31-7-1992. But that would be in the teeth of sub-section (4) of Section 6 and Section 3 itself. The purport of the Act was to protect those operators who had been issued permits between 1976 and 30-6 -1990 and not to depart from the interpretation placed by this Court. The Legislature while protecting the past mistakes of the Government has taken care not to repeat it in future. This is not discrimination but accepting the decision given by this Court. Further it is a validating provision. In absence of it the action of the authorities granting permits which was legislatively made permissible by Sections 3 and 4 would not have been saved. It too ceased to operate from 30-6-1 990 in view of sub-section (3) of Section 1 which reads as under:

"The provisions of the Act (except Sections 6 and 7) be deemed to have come into force on the 4th June, 1976 and remain in force up to and inclusive of the 30th June, 1990 and Section 6 shall be deemed to have come into force on the 1st July, 1990."

A provision which was legislatively dead on 30-6-1990 could not be deemed to be alive for purpose of grant of permit because of the expression "the date of publication of this Act in the Tamil Nadu Government Gazette" appearing in the provision. The High Court thus did not commit any error in dismissing the writ petition of those operators whose claim for new permit after 30-6-1990 was rejected by the authorities."

31. This answers the petitioners' claims and the very pronouncement as well as the decision of the Supreme Court referred to above in Cheran Transport Corporation Ltd., Vs. Regional Transport Authority, reported in 1996 (7) SCC 343. In the said , which is inter parties and which is binding on the parties, the Apex Court negatived the claim of the renewal applicant and sustained the grant in favour of the State Transport Undertaking. After the said pronouncements the claim of Declaration or mandamus is a total misconception and issue of such writ will run counter to the statutory provisions as well as pronouncement of the Apex Court. The remedy of writ is not meant to violate legislative enactment or defy the binding pronouncement of the Apex Court in 1996 (&) SCC 343.

32. The Tamil Nadu Motor Vehicles Act (Special Provisions) Act, 41 of

1992 has been interpreted by the Supreme Court in T.P.K. Thilagavathy's case and there can be no grant at all in favour of the writ petitioner as well. Any amount of renewal or interim orders, pending proceedings as per interim order which enabled the petitioners to continue their operation pending the proceedings before the State Transport Undertaking or pending revision petitions or pending the proceedings will not help the petitioners nor they could make novel claim on that basis. The pronouncement of the Supreme Court in Cheran Transport Corporation Ltd., Vs. Regional Transport Authority, reported in 1 996 (7) SCC 343, is a death knell to the petitioners' claims.

33. The attention of this court was drawn to the pronouncement of Abdul Hai Khan V. Subal Chandra Ghose, reported in 2002 AIR SCW 1694, where the Apex Court held thus, which pronouncement squarely applies to the facts of the present case on all fours. The Supreme Court held thus:

"11. From the contentions raised by the learned counsel for the parties it is clear to us that there is no dispute about the position of law that the notified Scheme, whether totally excluding private operators or partially excluding them is binding on all concerned so long as it remains in force. At the same time it is also clear that the Scheme as framed in 1963 does not totally exclude private operators. Indeed it permits operation of stage carriage service by private operators. Therefore, the Scheme is only a partial exclusion scheme. In such a case it is not open to a private operator who is himself operating on a nationalized route on account of modification of the Scheme to seek a writ of mandamus to the Authority not to grant permit to any other private operator on that route or a route overlapping a portion of the route. To put it differently, he is not entitled to enjoy a monopoly of operation of the route. It is up to the Authority to consider whether the application filed by a private operator for permit on that route or another route overlapping that route should be issued or not. In case the private operator who is operating on the nationalized route has a grievance that the number of private operators specified in the notified Scheme is being exceeded then the permit issued to the operator/operators in excess of the specified limit, may be challenged before the statutory fora in accordance with provisions of the Act. In any view of the matter, the writ petition seeking the relief quoted earlier is not maintainable, particularly when neither the private operators who are alleged to have got the permits in excess of the number specified in the notification nor the State undertaking have been impleaded as parties in the case. In such a case a prayer for a declaration in the form as sought in the writ petition could not be granted."

34. Following the said pronouncement which squarely applies on all fours to the present case, it is clear that the petitioners are not entitled to any relief. All the points are answered against the petitioners.

35. In the light of the pronouncement in Cheran Transport Corporation Ltd., Vs. Regional Transport Authority, reported in 1996 (7) SCC 343, which is inter parties and the latter pronouncement referred to above, the various contentions advanced by the learned senior counsel for the petitioners cannot be countenanced and the contentions advanced by the petitioners deserve to be rejected.

36. All the writ petitions are dismissed and the petitioners are not entitled to the relief of declaration or mandamus as prayed for. That apart, if such a mandamus or declaration are to be issued as prayed for, it would amount to compelling the respondents to do an illegality violating the statutory provisions of the Tamil Nadu Motor Vehicles Act, the Area Scheme as well as the Tamil Nadu Motor Vehicles (Special Provisions) Act, 1992 and the pronouncement of the Apex Court, which is binding on the parties referred to above.

37. This batch of writ petitions and connected WMPs are dismissed. This is a fit case where this court will be justified in awarding heavy cost against the petitioners as it is an abuse of pro0cess of this court. However, taking into consideration of the fact that the petitioners will have to wind up their transport operation and taking a considerate view, no cost is awarded in favour off the respondent and against the writ petitioners.

Internet:Yes

Index:Yes

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Copy to:-

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